

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KOBY LEE FRANCIS,

Plaintiff,

v.

MAJOR ADAM SMITH, SERGEANT  
GILLESPIE, CAPTAIN BRIAN JOSEPH II,  
SGT. RADACCI, WARDEN ORLANDO  
HARPER,

Defendants.

2:21-CV-00948-CCW

**MEMORANDUM ORDER**

This case has been referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On July 28, 2022, the Magistrate Judge issued a Report, ECF No. 33, recommending that Defendant's to Dismiss, ECF No. 28, be GRANTED as follows:

- Plaintiff's official capacity claims against Defendants should be dismissed with prejudice;
- Plaintiff's Fourteenth Amended claim for conditions of confinement should be dismissed with prejudice;
- Plaintiff's individual capacity claim against Defendant Orlando Harper should be dismissed with prejudice, and Defendant Harper terminated as a party defendant;
- Plaintiff's Fourteenth Amendment claim for excessive force as it relates to the use of the "restraint chair" should be dismissed without prejudice, and Plaintiff afforded leave to amend; and,
- Plaintiff's Fourteenth Amendment "class of one" equal protection claim should be dismissed without prejudice, and Plaintiff should be afforded leave to amend.

See ECF No. 33 at 1. Service of the Report and Recommendation was made on the parties, and no objections have been filed.

After a review of the pleadings and documents in the case, together with the Report and Recommendation, it hereby is **ORDERED** that Defendant's Motion to Dismiss, ECF No. 28, is **GRANTED** as set forth above, and the Magistrate Judge's Report and Recommendation, ECF No. 33, is adopted as the Opinion of the District Court.

IT IS FURTHER ORDERED, that, on or before **September 26, 2022**, Plaintiff may file an amended complaint with respect to his excessive force and "class of one" equal protection claims in an attempt to cure the deficiencies identified in the Magistrate Judge's Report and Recommendation.

IT IS SO ORDERED.

DATED this 26th day of August, 2022.

BY THE COURT:

/s/ Christy Criswell Wiegand  
CHRISTY CRISWELL WIEGAND  
United States District Judge

cc: Koby Lee Francis  
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ALLEGHENY COUNTY JAIL  
950 Second Avenue  
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All Counsel of Record (via ECF email notification)